

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.79 of 2020

Arising Out of PS. Case No.-24 Year-2019 Thana- BAIKUNTHPUR District- Gopalganj

SONU KUMAR Son of - Dhurupdeo Ray @ Dhupdeo Ray @ Dhrupdev Rai
@ Dhrubdev Roy @ Dhurupdeo Prasad Yadav Resident of Village -
Baikunthpur, P.S. - Baikunthpur, District - Gopalganj.

... .. Petitioner

Versus

1. The State of Bihar
2. Dilip singh, son of Late Yogendra Singh, resident of village – Banaura, P.S.
- Baikunthpur, District – Gopalganj.

... .. Respondent

Appearance :

For the Petitioner	:	Mr. Natraj Verma, Advocate Mr.N.C. Verma, Advocate
For the State	:	Mr.Akhileshwar Dayal, APP
For the Informant	:	Mr. Shekhar Singh, Advocate Mr. Aatyendra Rai, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT

Date : 12-07-2022

Heard learned counsel for the petitioner, learned
counsel for the informant and learned A.P.P. for the State.

Petitioner, in the present case, is aggrieved by and
dissatisfied with the judgment dated 4th December, 2019 passed
in Criminal Appeal No. 81 of 2019 by which the learned 1st
Additional Sessions Judge – cum – Children’s Court, Gopalganj
has refused to interfere with the order of the Juvenile Justice
Board rejecting the application of the petitioner to declare him a
juvenile.

The brief facts of the case are not in dispute. The
petitioner is an accused in Baikunthpur P.S. Case No. 24/2019



registered under Section 363 of the Indian Penal Code against the unknown persons. In course of investigation, it has been found that the kidnapped boy was murdered. The petitioner was apprehended in the said case, police obtained his confessional statement which led to recovery of certain incriminating articles by police. The prayer for bail of the petitioner was rejected up to this court in Cr. Misc. No. 3468/2021 vide order dated 09.04.2021.

At this stage it appears that when the records were sent to the Children's Court, it appears that the petitioner raised a plea of juvenility. On his behalf a school leaving certificate was filed with an application showing his date of birth as 01.03.2003. The medical examination of the petitioner was also conducted on his own request, he was found aged between 19 – 20 years. The plea of juvenility was, thus, rejected. He preferred statutory appeal before the Children's Court which has also been rejected. At the appellate stage, it appears that the petitioner brought on record his matriculation certificate in which his date of birth is mentioned as 17.02.2001. A copy of the matriculation certificate issued by the Bihar School Examination Board, Patna is on the record and the same is not disputed. The learned appellate court though mentioned this fact that the date of birth



of the petitioner is recorded in the matriculation certificate as 17.02.2001, but found that the petitioner had himself produced school leaving certificate showing his date of birth as 01.03.2003 and on that basis his Aadhar Card was prepared, therefore refused to consider the matriculation certificate as the basis for declaration of juvenility.

Learned counsel for the petitioner submits that the matriculation certificate of the petitioner is that of the year 2017 which is much prior to the alleged date of occurrence. It is submitted that because of the ill-advice rendered to the father and pairvikar of the petitioner the said matriculation certificate was not brought on the record and a wrong plea was taken on behalf of the petitioner that his date of birth is 01.03.2003.

Learned counsel for the petitioner has gone to the extent of arguing that even if the school leaving certificate was fabricated to confer the bonafide of juvenility to the petitioner, no consent of the petitioner in this regard may be assumed because admittedly he was minor and he was very much eligible to be declared a juvenile if his matriculation certificate would have been produced by his guardian. It is submitted that in this case a matriculation certificate has not been challenged, therefore in terms of the scheme of section 94 of the Act of



2015, the application for juvenility should have been considered accepting the matriculation certificate of the petitioner.

It is further submitted that the Act of 2015 is a piece of beneficial legislation for the children in conflict with law and such benefit has been given with with certain purpose and one of them is to give an opportunity to a juvenile to reform himself and get connected with the mainstream of the society.

Learned counsel submits that it is for this reason that the Hon'ble Division Bench of this Court in the case of **Lalu Kumar and Ors. versus The State of Bihar** reported in **2019 (4) PLJR 833**; held that the classification of offences in bailable and non-bailable sections in case of a juvenile would alone not be a determining factor for purpose of grant of bail. Learned counsel submits that it is not a case in which there is any evidence to show that the petitioner had declared his date of birth as prior to the date mentioned in the matriculation certificate, therefore there should not be any issue with regard to acceptance of the date of birth mentioned in the matriculation certificate. Learned counsel submits that the plea of estoppel cannot be argued against a juvenile to his detriment.

Mr. Shekhar Singh, learned counsel for the informant has opposed the present application. It is his submission that the



earlier application filed before the learned Juvenile Justice Board on behalf of the petitioner itself contained his date of birth as 01.03.2003 and in support of the same a school leaving certificate was also enclosed.

Learned counsel submits that it was an attempt before the Board to get declared the petitioner a juvenile below 16 years of age and those who are responsible for this act must be proceeded against and are liable to be prosecuted. Learned counsel submits that in the background of the facts of the case no illegality or infirmity may be found with the impugned orders.

Learned counsel further submits that in the petition filed in another case the petitioner has declared his age as 19 years and earlier he had moved this court for regular bail as an adult. The school leaving certificate has been fabricated on 05.05.2017 showing that he was studying in Class – IX which was completely false.

Having heard learned counsel for the petitioner and learned counsel for the informant and upon perusal of the records, this court finds that there was allegedly an attempt by those who were the pairvikar of the petitioner to fabricate the date of birth for the petitioner. A school leaving certificate dated



05.05.2017 showing him a student of Class – IX was obtained and an application was filed in the Juvenile Justice Board to declare him a juvenile on that basis which was rejected by the learned Juvenile Justice Board keeping in view the medical examiner's report which was obtained at the instance of the petitioner itself. It however appears that the petitioner was a student of Class – X and had appeared in the matriculation examination from the Bihar School Examination Board in the year 2017 itself. In the said examination he had failed but the mark-sheet issued by the School Examination Board is showing his date of birth as 17.02.2001. This certificate was withheld initially but later on the certificate was produced before the learned appellate court and submission was made that the petitioner be declared juvenile.

This case raises a question as to whether for the alleged act of fabrication of the school transfer certificate mentioning a wrong date of birth and for making an effort to use the same to declare the petitioner a juvenile, in the present case, the plea of juvenility based on the matriculation certificate which is not in doubt is liable to be rejected. When this court examines this issue keeping in view the object and purpose of the Act of 2015 which contains the beneficial and benevolent provisions for the



juvenile in conflict with law, this Court is inclined to take a view that so far as the plea of juvenility is concerned, it must be decided in the light of the scheme of the Act of 2015. Section 94 of the Act of 2015 reads as under:

“94. Presumption and determination of age. - (1)

Where, it is obvious to the Committee or the Board, based on the appearance of the person brought before it under any of the provisions of this Act (other than for the purpose of giving evidence) that the said person is a child, the Committee or the Board shall record such observation stating the age of the child as nearly as may be and proceed with the inquiry under section 14 or section 36, as the case may be, without waiting for further confirmation of the age.

(2) In case, the Committee or the Board has reasonable grounds for doubt regarding whether the person brought before it is a child or not, the Committee or the Board, as the case may be, shall undertake the process of age determination, by seeking evidence by obtaining—

(i) the date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination Board, if available; and in the absence thereof;

(ii) the birth certificate given by a corporation or a municipal authority or a panchayat;

(iii) and only in the absence of (i) and (ii) above, age shall be determined by an ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board: Provided such age determination test conducted on the order of the Committee or the Board shall be completed within fifteen days from the date of such



order.

(3) The age recorded by the Committee or the Board to be the age of person so brought before it shall, for the purpose of this Act, be deemed to be the true age of that person.”

If the matriculation certificate of the petitioner is taken into consideration one may immediately come to a conclusion that it would fall in the very first category i.e. clause (1) of subsection 2 of Section 94 of the Act of 2015 and the same not being in doubt and dispute is required to be accepted for purpose of declaration of juvenility. It is not a case in which the matriculation certificate is disputed on the strength of any documentary evidence showing that the petitioner was an adult on the alleged date of occurrence.

The alleged act of fabrication of a different school leaving certificate giving a wrong and false date of birth would attract a penal action and that is one thing which may be dealt with in a separate proceeding. Those who may be held liable for fabrication of the certificate in order to take advantage of the date of birth are definitely required to be proceeded against and for this, this court would grant liberty to the informant – opposite party no. 2 in this case to proceed in accordance with law as may be advised to him.

So far as this application is concerned, this court sets-



aside the impugned order and directs the learned Juvenile Justice Board, Gopalganj to pass a fresh order on the plea of juvenility of the petitioner after taking into consideration his matriculation certificate. The petitioner is at liberty to file a formal application for this purpose before the learned Juvenile Justice Board at Gopalganj.

This application stands allowed to the extent indicated hereinabove.

(Rajeev Ranjan Prasad, J.)

Rajeev/-

AFR/NAFR	
CAV DATE	
Uploading Date	13.07.2022
Transmission Date	13.07.2022

Note: The ordersheet duly signed has been attached with the record. However, in view of the present arrangements, during Pandemic period all concerned shall act on the basis of the copy of the order uploaded on the High Court website under the heading 'Judicial Orders Passed During The Pandemic Period'.

